IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 22202

ALBERT E. LEUTHOLD, SUPERINTENDENT OF BANKS, STATE OF MONTANA, HELENA, MONTANA, SECURITY BANK AND MINERS BANK OF MONTANA, N. A.

Appellants

VS.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY

Appellee

THE FIRST NATIONAL BANK OF BUTTE AND DALY NATIONAL BANK OF ANACONDA

Intervenors

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, BUTTE DIVISION

AMICI CURIAE BRIEF OF INDEPENDENT BANKERS ASSOCIATION OF MONTANA, WESTERN INDEPENDENT BANKERS, AND INDEPENDENT BANKERS ASSOCIATION OF AMERICA

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January 22, 1968

333-3539 Hayward-Court Brief Prtg. Co., Mpls., Minn. 55415 333-3530

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INTEREST OF AMICI CURIAE

Amici are associations of independent, locally owned, national and state banks. The Montana Association repre-

sents 69 banks, the Western Association represents 369 banks in nine Western states, and the National Association represents over 6,600 banks in the remaining 41 states, including Montana. These Associations are organized to represent the interests of independent unit banking, which includes the preservation of competition in banking, and the prevention of concentration of control of banks in Montana and elsewhere.

The Western Association and the National Association jointly sponsored in Congress the legislation now known as the Bank Holding Company Act of 1956. At the time this legislation was considered in Congress, holding companies were spreading rapidly, especially in states prohibiting or restricting branching. In the House of Representatives, the original legislation was designed to bar interstate expansion of holding companies and to restrict severely expansion within the home state of a holding company. The Senate version was more moderate, and was designed to carefully screen through the Federal Reserve Board any further acquisitions by these companies.

A serious defect in the Senate version was the omission of a prohibition against holding companies expanding across state lines. The Western and National Associations vigorously supported and were successful in obtaining in Congress the "Douglas Amendment" (12 *U.S.C.* § 1842 (d)), the intended purpose of which was to flatly prohibit any expansion by bank holding companies across state lines.

The Bank Holding Company Act was enacted to prevent such expansion, as will be shown from the Reports of Congressional Committees. The device used by the intervening banks, if permitted, would defeat the intended

purpose of preserving competition and preventing concentration in the field of banking.

The *Amici* Associations appreciate the Court's leave to file this brief.

STATEMENT OF THE CASE AND SPECIFICATION OF ERRORS

For the purpose of this brief *Amici Curiae* adopt the statement of facts and specification of errors contained in the brief of Appellants.

ARGUMENT

I.

THE COMPTROLLER'S DECISION IS REVIEWABLE UNDER THE ADMINISTRATIVE PROCEDURE ACT.

A. The State Superintendent of Banks Has Standing.

The lower court held that as the primary enforcement officer of state banking laws, the Superintendent of Banks has standing to sue to review under the Administrative Procedure Act the decision of the Comptroller of the Currency approving the merger of the intervening banks. This decision is now strongly undergirded by the decision of the Court of Appeals for the District of Columbia in the case of *Nuesse v. Camp,* 385 F.2d (1967).

As in other federal banking statutes, Congress in the Douglas Amendment to the Bank Holding Company Act 12 *U.S.C.* §1842(d)) deliberately deferred to the laws of the states. The pertinent part of the Douglas Amendment is to the effect that acquisition of "all or substantially all of the assets of *any* additional bank located *outside* of the

State . . ." in which the holding company has its office, or principally conducts its operations, is prohibited, "unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the state in which such bank is located, by language to that effect and not merely by implication" (12 *U.S.C.* §1842(d)). (Emphasis added.) There is no question that Montana has no such statute and that Minnesota is the home state of Northwest Bancorporation because it has its principal office in Minnesota and its total deposits in subsidiary banks in Minnesota are greater than in any other state in which it operates.

This deliberate deference by Congress to the State law follows the same pattern as contained in the branching law (12 *U.S.C.* §36(c)). This deference to state law, in fact, has been a constant policy of Congress in all of the basic areas of banking.[1]

The rationale of using state laws to govern national banks competing with state banks in each state recognizes that the states have widely varying economies. What is suitable for a densely populated industrialized state is not necessarily suitable for an agricultural state. Neither Federal nor State governments have the constitutional right to pre-empt the chartering and regulation of banks and they

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[1]See e. g. the measure of allowable capitalization of new national banks, *31 Stat.* 48 (1900), *12 U.S.C.* §51 (1935); as to interest rates on loans, *48 Stat.* 191 (1933), *12 U.S.C.* §84 (1935); as to securing public money deposits, *31 Stat.* 1448 (1901), *12 U.S.C.* §90 (1950); as to trust powers, *76 Stat.* 668 (1962), *12 U.S.C.* §92a(a) (1962); as to conversion of a national bank to a state bank, *64 Stat.* 456 (1950), *12 U.S.C.* §214c (1954); as to interest on demand deposits, *48 Stat.* 181 (1933), *12 U.S.C.* §371a (1935); as to interest on savings deposits, *12 U.S.C.* §371 (1933), and as to taxation of national banks, *13 Stat.* 111 (1864), *12 U.S.C.* §548 (1926). See *Franklin Nat'l Bank of Franklin Square v. People of State of New York*, 347 U. S. 37 (1954), where the Court notes some of these areas of equalization.

must, therefore, share the field and provide an accommodation between the two systems so that one does not obtain an advantage over the other. Congress has avoided a monolithic system of banking for the country and has used state laws as guides for national banks operating in the various states.

In the Douglas Amendment Congress provided that holding companies cannot acquire banks in another state unless that other state adopts a statute specifically permitting it. Montana has not seen fit to adopt such a law and the State Superintendent in Montana has the right to vindicate the choice his state has made, namely, to rely upon the Douglas Amendment to prevent such acquisitions.

Further, Congress provided in Section 1846 as follows:

> The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

B. The Comptroller's Decision Is Subject to Review under the Administrative Procedure Act.

We agree with the lower court that the decisions of the Comptroller, whenever they involve an alleged violation of the state law, are subject to review under the Administrative Procedure Act (APA).

The APA grants to the federal courts a wide scope of review of agency actions. In its pertinent part, the APA states that

> . . . the reviewing court shall . . . (2) hold unlawful and set aside agency action, findings and conclusions found to be

(A) . . . not in accordance with law; . . .

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. . . . (5 *U.S.C.* §706).

There is no question that the office of the Comptroller of the Currency is an "agency" within the definitions in the APA (5 *U.S.C.* §§551, 701).

Appellants are proper parties and have standing to maintain an action for review under the APA. 5 *U.S.C.* §702 states that "a person suffering legal wrong . . . or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." The word "person" as defined in the APA includes all of the appellants herein. The phrase "relevant statute" applicable in the instant case is the Douglas Amendment.

The appellants are adversely affected and aggrieved because the Comptroller has approved expansion of a foreign holding company within the state of Montana. The expansion presented by the facts in this case and any further expansion, if permitted, will be to the detriment of nonholding company banks because the holding company system in Montana will thus be able to increase its competitive advantage over independent unit banks.

Section 704 of the APA gives the court the authority to conduct this review.

C. The South Dakota Case Is Distinguishable.

A case similar to the instant case was decided by the Court of Appeals for the Eighth Circuit in 1964. *State of South Dakota v. National Bank of South Dakota,* 335 F.

2d 444. In that case the state sued the holding company and its subsidiary directly, alleging violations of the National Bank Act and the Bank Holding Company Act. It was not an action for review and the Comptroller was not a party. In the instant case, the state and competing banks are challenging the agency action of the Comptroller in approving the consolidation of a holding company subsidiary bank and another bank within the framework of the APA.

In the *South Dakota* case, the Court held that the Holding Company Act provided only a criminal remedy. However, notwithstanding the criminal remedy provided in the Act, courts have the inherent power to restrain statutory violations where a criminal remedy would be inadequate or inappropriate. See, e g., *28* Am. Jur., *Injunctions* §160. Further, the criminal enforcement section of the Act (*12 U.S.C.* §1847) provides penalties only for *willful* violations of the Act. If construed literally any good faith attempt by a foreign holding company to expand across state lines would not be willful and thus there would be no remedy whatever under the Holding Company Act.

The broad coverage of the APA provides an adequate remedy in this case. If this Court finds that the Douglas Amendment prohibits any expansion by a holding company across state lines by whatever device, the Comptroller had no authority to approve the consolidation. This is so because the Comptroller, in exercising discretion under the Merger acts (12 *U.S.C.* §§215, 1828(c)) is bound by all federal banking laws.

II.

THE DOUGLAS AMENDMENT (12 U.S.C. § 1842(d)) BARS THE CONSOLIDATION.

A. The Legislative History of the Bank Holding Company Act Furnishes Important Insights Into the Intent of Congress.

The legislative history of the Bank Holding Company Act of 1956 shows clearly that Congress was convinced that bank holding companies were thwarting national banking policy, that they posed a threat to competition in banking, and that immediate controls were urgently required.

Following are excerpts from House Report No. 609 84th Cong. 1st Sess. May 20, 1955, House Misc. Reports, Vol. 3:

> "The need for immediate legislation which would at the same time control the future expansion of bank holding companies and force them to divest themselves of nonbanking business has been established to the complete satisfaction of your committee."
>
> * * * * *
>
> "Evidence developed during the hearings has convinced your committee that bank holding companies are not in accord with the very precepts upon which our banking system rests. The United States early in its history, it should be recalled, adopted a democratic ideal of banking. Other countries, for the most part, have preferred to rely on a few large banks controlled by a banking elite. There has developed in this country, on the other hand, a conception of the independent unit bank as an institution having its ownership and origin in the local community and deriving its business chiefly from the community's industrial and

commercial activities and from the farming population within its vicinity or trade area. Its activities are usually fully integrated with local economic and social organization. *The bank holding company device threatens to destroy this democratic grassroots institution.*"

* * * * *

"*Your committee believes that the destruction of the American unit banking system, resulting in the further concentration of credit facilities, would have revolutionary effects upon our free-enterprise system. Ultimately, monopolistic control of credit would entirely remold our fundamental political and social institutions.*"

* * * * *

"The time for action is now. We dare wait no longer, for already we are rapidly following the example of England whose many banks became the Big Five."

"While our banking structure has evolved down through the years to meet changing economic requirements, this country has held steadfast to the doctrine that competition should prevail in the banking industry. *Our national banking policy has aimed at protecting and fostering the growth of independent unit banks.*"

* * * * *

"*Your committee believes it is obvious that the declared will of Congress in favor of independent competitive banking is being thwarted by indirect branch banking, through the mechanism of the holding company.*"

* * * * *

"*Your committee should like to reemphasize the fact that this is the only country left where most communities are served by home-owned and home-managed banks which are aware of and responsive to the needs of the people of their areas. Our independent banking*

system has been a vital factor in the development of the United States."

* * * * *

"The holding company device lends itself readily to the amassing of vast resources obtained largely from the public, which can be controlled by the relatively few who comprise the management of the holding company, giving them a decided advantage in acquiring additional properties and in carrying out a program of expansion. Such power can be used to acquire independent banks by measures which leave local management and minority stockholders little with which to defend themselves except their own protests. . . . (Emphasis supplied.)

This House Report was followed, in the second session of the 84th Congress, by Senate Report No. 1095, 84th Cong. 2nd Sess. pp. 248 et seq., from which we quote the following pertinent excerpts:

"In the opinion of your committee, public welfare requires the enactment of legislation providing federal regulation of the growth of bank holding companies and the type of assets it is appropriate for such companies to control."

* * * * *

"The dangers accompanying monopoly in this field are particularly undesirable in view of the significant part played by banking in our present national economy."

* * * * *

"The factors required to be taken into consideration by the Federal Reserve Board under this Bill also require contemplation of the *prevention of undue concentration* of control in the banking field to the detriment of public interest and the encouragement of

competition in banking. *It is the lack of any effective requirement of this nature in present Federal laws which has led your committee to the conviction that legislation such as that contained in this bill is needed.*" (Emphasis supplied.)

The statement of national policy in connection with holding company legislation is underscored by similar statements in connection with the Bank Merger Act adopted four years later.

Following are excerpts from House Report No. 1416 (U. S. Code, Cong. & Adm. News, 86th Cong., 2nd Sess., 1960, p. 1995 et seq.) on the 1960 amendment controlling bank mergers and acquisitions of bank assets. 12 *U.S.C.* §1828 (c).

"Vigorous competition in banking stimulates competition in the entire economy, in industry, commerce, and trade. There is no question that competition is desirable in banking, and that competitive factors should be considered in all aspects of the supervision and regulation of banks."

* * * * *

"The number of commercial banks in the United States has been slowly but steadily declining in the past ten years."

* * * * *

"This occurred in spite of a tremendous increase in the country's need for banking services."

* * * * *

"The large numbers of mergers in recent years, the vast resources involved in these mergers, and the increases in the size of large banks, particularly those which have grown through mergers, all give rise to concern for the maintenance of vigorous competition in the banking system and in the industry and com-

merce served by the banking system. The reduction in the number of banks and the loss of competition between merged banks also give rise to concern."

* * * * *

"Sad experiences in our history have demonstrated that to maintain a sound banking system in this country banks must be regulated much more strictly than ordinary businesses."

B. The Legislative History of the Douglas Amendment Shows It Was Intended as an Absolute Bar to Interstate Expansion of Holding Company Systems.

The House Bill proposed that holding company expansion across state lines be barred absolutely and that expansion within the home state be severely restricted. The report stated:

> Section 5 further provides that in no case could further expansion outside of the home State of a bank holding company or a subsidiary thereof be approved and applications within the home State could be approved only within the area within which branches of banks are permitted or where by State statute such expansion is specifically exempted from branch banking restrictions. H.R. Rep. No. 609, *supra,* 15.

The Senate Banking Committee modified the House version as to holding company expansion within its home state, but did nothing specific as to the expansion across state lines. (See S. Rep. No. 1095, 84th Cong., 2d Sess. (1956).) Many senators considered this omission a serious defect in the bill and Senator Douglas offered his amendment (now Section 1842(d)) with the intent of barring absolutely any

expansion of holding companies across state lines. After adoption of the amendment by the Senate, it was adopted without change by the House.

The debate in the Senate on April 24, 1956, from the time of introduction of the amendment to the roll call vote, is recorded in seven pages of the Congressional Record for that day. 102 Cong. Rec. 6857-6864 (1956), set out in full in Appendix A to this brief. At the outset Senator Douglas stated:

> Mr. President, the pending bill, and the amendment which has just been read, are in the true American tradition, for what the sponsors of the amendment are seeking to do is to prevent an undue concentration of banking and financial power, and instead to keep the private control of credit diffused as much as possible. 102 Cong. Rec. at 6857.

In reply to questions, Senator Douglas stated that all he was trying to do was

> to prevent bank holding companies from expanding across State lines, unless the States give them explicit permission to do so. *Id.* at 6859.
>
> * * * * *
>
> However, so far as the bank holding companies are concerned, I want to check their expansion. This seems to me to be about the best way of doing so. *Id.* at 6860.

Senator Bricker, the chief opponent of the amendment, clearly understood that the amendment was intended to be an absolute bar against holding company expansion across state lines, regardless of the provisions of any other part of the Act. He said:

> The Douglas amendment prohibits the acquisition of

> a bank outside the home State of a bank holding company unless the laws of the State to be entered specifically authorize such acquisition. I submit, Mr. President, that no State in this country has enacted laws along this line. So the effect of the Douglas amendment is to absolutely prohibit a bank from crossing State lines. *Id.* at 6881.

Senator Payne, a supporter of the amendment, understood the evils to be put down by this amendment.

> Through its ability to cross State lines, the bank holding company can operate in a way closed to the independent bank. The competition presented by a single bank which is a subsidiary of a bank holding company may not in any legal sense be unfair competition, but the fact that it is backed by the powerful assets of a vast bank holding company gives it a competitive advantage that is undeniable. And this competitive advantage springs from the fact that the bank holding company can operate in a manner closed to the independent bank. *Id.* at 6861.
>
> * * * * *
>
> This amendment would require that State legislatures pass specific legislation authorizing bank holding companies from another State to acquire interests in State banks located within its borders. The purpose of this amendment is to return to the States their traditional control over the activities of the State banks now nominally under the State's authority. *Id.* at 6862.

C. The Apparent Exception in 12 U.S.C. §1842(a)(3) Does Not Apply to Interstate Expansion.

The lower court held that the words "other than a bank" in 12 *U.S.C.* §1842(a)(3) concerning asset acquisitions amounts to an exception to the Douglas Amendment. The

lower court cites *State of South Dakota v. National Bank of South Dakota, supra.* However, as previously noted, that case was decided in a different framework. In contrast, the instant action is brought under the Administrative Procedure Act to challenge the decision of the Comptroller in approving the merger in the face of the flat prohibition of the Douglas Amendment.

The issue of the applicability of the Douglas Amendment has previously been before this Court in *First Nat'l Bank in Billings v. First Bank Stock Corporation,* 306 F. 2d 937 (9th Cir. 1962). However, this Court expressed no opinion regarding the dictum of the lower court in that case that the Douglas Amendment was not applicable because of the apparent exception in Section 1842(a)(3).

In determining the intent of Congress from the legislative history, particularly from the debate on the Douglas Amendment set out in Appendix A hereto, this Court has two choices. It may adopt the reasoning of the lower court, or it may give effect to the Douglas Amendment as a bar to any interstate expansion. In the latter case, it would be consistent to hold that the apparent exception in Section 1842(a)(3) applies only to expansion within the state where the operations of the holding company are principally conducted, in this case Minnesota. We urge the Court to resolve any doubt between these alternatives in favor of the latter, in order to give effect to Congressional intent.

The intent of Congress in providing the apparent exception was to prevent a conflict between federal regulatory agencies in their respective jurisdictions in approving bank acquisitions or mergers. For example, a merger between national banks is subject to the approval only of the Comptroller of the Currency (12 *U.S.C.* §§215 and 1828(c)).

It was apparently felt by Congress that an acquisition of assets, to the extent that it constituted a merger between banks where the resulting bank is a national bank, was already covered by another statute (12 *U.S.C.* §215) and that it might be confusing to require approval of the Federal Reserve Board under the Holding Company Act. This might create a situation where one agency might approve and the other disapprove. See Hearings on H.R. 6504 before the House Committee on Banking and Currency, 82d Cong., 2d Sess., at page 24 (1952); Hearings on S. 76 and S. 1118 before the Senate Committee on Banking and Currency, 83d Cong., 1st Sess., at pages 14, 17, 26 and 50 (1953-54).

However, approval of bank mergers under 12 *U.S.C.* §§215 and 1828(c) are matters within the discretionary powers of the three federal regulatory agencies. The Douglas Amendment by its language and its legislative history is intended to be a flat prohibition against interstate expansion, in effect the dropping of a curtain at the state border. It permits of no discretion. Thus, so far as discretion is permitted as to approval of bank mergers, it stops at the state border where a subsidiary bank of a holding company is the resulting bank. This Court can properly make a distinction between intrastate and interstate acquisitions in applying the apparent exception in Section 1842(a)(3). Furthermore, courts are not bound by the literal import of a statute but may apply its manifest intent. As stated in 50 Am. Jur., *Statutes* §240:

> The courts are not always confined to the mere letter of the law, or to the literal or strict meaning of statutory terminology. It often happens that the true intention of the law-making body, though obvious, is not

expressed by the language employed in a statute when that language is given its literal meaning. In such case, the carrying out of the legislative intention, which is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. Hence, it is a general rule that the manifest intent of the legislature will prevail over the literal import of the words.

D. The "Consolidation" Was Not an Acquisition of "All or Substantially all of the Assets of a Bank" Within the Meaning of 12 U.S.C. §1842(a)(3).

Assuming arguendo that the Douglas Amendment applies only if an application for approval must be made to the Federal Reserve Board, *Amici* submit that the instant transaction is subject to application procedure.

As set forth previously, Section 1842(a)(3) provides that no application for approval by the Board need be made if a holding company subsidiary bank acquires "all or substantially all of the assets of a bank." However, in this case the consolidation of the intervening banks is far more than a mere acquisition of assets.

Virtually the same situation in a different statutory setting was presented to the United States Supreme Court in *United States v. Philadelphia Nat'l Bank,* 374 U.S. 321 (1963). In that case, the Philadelphia National Bank (PNB) and Girard Trust Corn Exchange Bank agreed to consolidate under the charter of PNB.[2] The United States brought an action to enjoin the proposed merger under the Sherman Act (15 *U.S.C.* §§1, 4) and the Clayton Act (15

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[2]The Supreme Court discussed the difference between a merger and consolidation and noted that for the purposes of its opinion, it would refer to the transaction as a merger. 374 U.S. at 332, n.7.

U.S.C. §§18, 25).[3] The Supreme Court held the Clayton Act had been violated and remanded the case for judgment to be entered enjoining the proposed merger.

Although the antitrust laws were involved in the *Philadelphia* case, much of the Court's reasoning is applicable to an agency action applying the Bank Holding Company Act where a consolidation takes place. In *Philadelphia,* the Court pointed out the Section 7 of the Clayton Act (12 *U.S.C.* § 18) originally applied only to stock acquisitions. However:

> "the courts found mergers to be beyond the reach of §7, even when the merger technique had supplanted stock acquisitions as the prevalent mode of corporate amalgamation. (Citations omitted.) As a result, §7 became largely a dead letter. * * *
>
> "It was against this background that Congress in 1950 amended §7 to include an assets-acquisition provision." 374 U.S. at 338-340.

The Court then discussed the problem of why mergers had not been specifically included and stated:

> "The legislative history is silent on the specific questions why the amendment made no explicit reference to mergers, why assets acquisitions by corporations not subject to FTC [Federal Trade Commission] ju-

[3]"Sestion 1 of the Sherman Act provides in pertinent part: 'Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.' Section 7 of the Clayton Act provides in pertinent part: 'No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly'." 374 U.S. at 323, n.1.

> risdiction were not included, and what these omissions signify. Nevertheless, the basic congressional design clearly emerges and from that design the answers to these questions may be inferred. Congress primarily sought to bring mergers within §7 and thereby close what is regarded as a loophole in the section." 374 U.S. at 341.

When Congress enacted the 1950 amendment to include assets acquisitions, it provided that such assets acquisitions applied "only by corporations 'subject to the jurisdiction of the Federal Trade Commission.' " 374 U.S. at 336. The Supreme Court pointed out that the:

> "FTC, under §5 of the Federal Trade Commission Act, has no jurisdiction over banks. (Citation omitted.) *Therefore, if the proposed merger be deemed an assets acquisition, it is not within §7.*" (Emphasis added.) 374 U.S. at 336.

The Court found that a merger[4] did not come specifically within the terms of either a stock or assets acquisition and decided it must therefore determine the intent of Congress

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[4]"A merger necessarily involves the complete disappearance of one of the merging corporations. A sale of assets, on the other hand, may involve no more than a substitution of cash for some part of the selling company's properties, with no change in corporate structure and no change in stockholder interests. Shareholders of merging corporations surrender their interests in those corporations in exchange for their very different rights in the resulting corporation. In an asset acquisition, however, the shareholders of the selling corporation obtain no interest in the purchasing corporation and retain no interest in the assets transferred. In a merger, unlike an asset acquisition, the resulting firm automatically acquires all the rights, powers, franchises, liabilities, and fiduciary rights and obligations of the merging firms. In a merger, but not in an asset acquisition, there is the likelihood of a continuity of management and other personnel. Finally, a merger, like a stock acquisition, necessarily involves the acquisition by one corporation of an immediate voice in the management of the business of another corporation; no voice in the decisions of another corporation is acquired by purchase of some part of its assets." 374 U.S. at 336, n. 13.

to see if Section 7 of the Clayton Act applied to bank mergers. After reviewing various factors, the Court concluded that:

> "the stock-acquisition and assets-acquisition provisions, *read together*, reach mergers, which fit neither category perfectly but lie somewhere between the two ends of the spectrum. * * * So construed, the specific exception for acquiring corporations not subject to FTC's jurisdiction excludes from the coverage of §7 only assets acquisitions by such corporations when not accomplished by merger." 374 U.S. at 342.

Amici submit that the foregoing language controls the consolidation in the present case. Like the Clayton Act, the Bank Holding Company Act has a provision for acquisition of stock (12 *U.S.C.* §1842(a)(2)). If applicable, the transaction is prohibited by Section 1842(d). Again, like Clayton, the Bank Holding Company Act has a provision for acquisition of assets (12 *U.S.C.* §1842(a)(3)). Just as in Clayton (since banks were not subject to the jurisdiction of the FTC), assets acquisitions are beyond the reach of the Board because of the exception provided in Section 1842(a)(3).

The matter to be determined, as in the *Philadelphia* case, is whether Congress intended assets acquisitions by a bank holding company subsidiary bank to include mergers and consolidations. *Amici* submit that the language of the Act itself shows that mergers and consolidations were not intended to come within the meaning of acquiring "all or substantially all of the assets of a bank."

The language of Section 1842 shows that Congress intended to distinguish between an "acquisition of stock," an "acquisition of assets" and a "merger." In Section 1842

(a)(2), the words "acquire direct or indirect control of any voting shares" are used, in Section 1842(a)(3), the words "acquire all or substantially all of the assets" are used, and in Section 1842(a)(4), the words "merge or consolidate" are used. Thus, in three consecutive clauses, Congress distinguished between an "acquisition of stock," an "acquisition of assets" and a "merger." An acquisition of stock may be part of a merger, an acquisition of assets may be part of a merger, but a merger is neither of these standing alone.

In this connection, certain rules of statutory construction are applicable also.

> In the absence of a legislative intent to the contrary, legal terms in a statute are presumed to have been used in their legal sense. 2 Sutherland, *Statutory Construction* §4919.

> The use by the legislature of certain language in one instance and wholly different language in the other indicates that different results were intended, and the courts have even so presumed. Under this rule, where language is used in one section of a statute different from that used in other sections of the same chapter, it is to be presumed that the language is used with a different intent. Accordingly, the presence of a provision is one section of a statute and its absence from another are an argument against reading it as implied by the section from which it is omitted. 50 Am. Jur.. *Statutes* §274.

The mergers, reorganizations, exchanges of stock, purchase of assets, assumption of all debts and liabilities of the merging banks, and conversion of one to a branch far exceeded the scope of clause (3) which at most permits only acquisition of assets of a bank by a subsidi-

ary bank. Even the appellees have characterized the transaction as a consolidation and not as an "acquisition of assets."

Thus, to paraphrase the Supreme Court in the *Philadelphia* case:

> "So construed, the specific exception [of §1842(a)(3)] for acquiring corporations not subject to the [Federal Reserve Board's] jurisdiction * * * [includes] only assets acquisitions by such corporations when not accomplished by merger." 347 U.S. at 342.

Where a foreign bank holding company expands across state lines by having one of its subsidiaries consolidate or merge with another bank, *Amici* submit that such a transaction must be submitted to the Federal Reserve Board since Sections 1842(a)(2) and 1842(a)(3), *read together*, reach mergers and consolidations. In the absence of a state statute within the terms of Section 1842(d), the Board must deny the application pursuant to Section 1842(d).

The mere fact that the Board does not feel a consolidation comes within its jurisdiction under the Bank Holding Company Act does not foreclose such a construction.[5] The Douglas Amendment, like the 1950 amendment to the Clayton Act, was designed to close a loophole and the intent of Congress to prohibit expansion of foreign bank holding companies in the absence of express state statutory authority should be given effect.

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[5] "Of course, our construction of the amended §7 is not foreclosed because, after the passage of the amendment, some members of Congress, and for a time the Justice Department, voiced the view that bank mergers were still beyond the reach of the section." *United States v. Philadelphia Nat'l Bank, supra*, 347 U.S. at 348.

III.

THE COURT MAY CONSIDER THE PRACTICAL EFFECTS OF ITS DECISION.

The Court has the inherent power to consider the practical effects of its decision in this case. The *Amici* associations see a great potential danger of holding companies rapidly expanding across state lines if the Court approves the device used in this case, and urge the Court to consider the effects of affirming the lower court.

This device is aided by tax benefits under the Internal Revenue Code. The holding company, whose stock is traded on the market and has an ascertainable value, is used to make an acquisition by a tax-free exchange, a benefit extremely attractive to the seller. Once the acquisition is made, the holding company can syphon off the profits earned by the subsidiary 85% tax-free, a benefit attractive to its stockholders. A holding company thus motivated can easily amass more resources because the transaction requires no new cash capital, only stock certificates.

The combination of the device in the instant case, together with these tax benefits, furnish the means and incentives for rapid expansion of holding companies across state lines. Already, Minnesota-based companies control a substantial amount of commercial bank deposits within the state of Montana. Should the Court approve this device, the *Amici* Associations anticipate that holding companies will continue to increase in size and power while independent unit banks will be removed from competition.

The criteria for approval of bank mergers found in 12 *U.S.C.* §1828(c) render that statute an inadequate alternative to controlling this type of interstate expansion. The

1966 amendments to this section incorporate the standards of the Sherman and Clayton Acts, *supra,* at n. 3. These standards require first the delineation of a relevant market area and a determination of whether the control of bank deposits is beyond tolerable limits within that area. As seen in this case, the Butte and Anaconda banks are probably not in the same competitive area. However, if a holding company using the device in this case could, by tax-free stock exchanges, acquire additional, stratetically-located banks throughout the state of Montana, it could effectively lessen competition. This is so because smaller unit banks surrounding a larger bank become, in effect, its satellites.

Smaller country banks tend to use the larger county-seat banks as a correspondent bank. They use the larger bank for deposit of cash reserves, in return for which the larger bank renders many services to the smaller banks, including loan participations, clearance of checks, bond advice, trust services, credit advice and many other services.

The accumulation of reserve accounts in the larger correspondent banks, in turn, are deposited in large city banks in exchange for similar types of services. When the county-seat banks and the larger city banks are owned by a holding company, this funneling process gives dominant power to the entire holding company system. Thus, holding company systems which are able to handle the smallest to the largest of accounts, and to handle all of the needed services for these accounts, present formidable competition to independent unit banks, especially for commercial accounts.

Acquisitions by holding companies not only have an adverse effect on banking competition, but upon the economy in the area of their operations as well. If all the banks

in a community are owned by one holding company, a commercial borrower has one source of credit. If two holding companies own all the banks, he has only two alternate sources, even though there may be a dozen banks in the community.

In a Congressional study published December 23, 1960, it is stated:

> "Therefore, all things being equal, any reduction in the number of banks in a given market area or any feature of concentration such as *the growth of branch banking systems or holding company systems will tend to diminish competition in that area* and make it more difficult for a given businessman to secure loans * * *. It is obvious, then, that in the banking market the existence of alternative sources of supply for the would-be borrower is of the utmost importance." (Emphasis added.)
>
> See "*Banking Concentration and Small Business*", December 23, 1960, a report of the Select Committee on small business, House of Representatives. Eighty-sixth Congress, pp. 6, 78, 82, 90.

Small and medium-sized businesses are dependent upon local commercial banks for their financing because their reputation and credit standing are local. It would be difficult, if not impossible, for these businesses to obtain financing in another locality.

The national policy favors competition in banking, not only because it provides alternate sources of credit and services at fair rates, but also because it permits competition at the correspondent bank level. Where unit banking is prevalent, large city banks compete with each other for the business of smaller banks. Thus, the smaller banks have al-

ternate sources for loan participations and services which they are not equipped to handle. In short, the ideal situation exists where unit banks compete for the business of individual customers and correspondent banks compete for the business of local banks. This two-level competition in banking assures the public of availability of credit and other services at competitive cost.

The *Amici* associations feel that the Court should consider the practical effects of its decision in light of the realities of the banking market in Montana and elsewhere, as well as the avowed intent of Congress in enacting the Douglas Amendment to the Bank Holding Company Act.

CONCLUSION

The *Amici* associations urge this Court to reverse the decision of the lower court and remand the case for the purpose of placing the intervening banks in their status quo before the merger.

Respectfully submitted,

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600 Degree of Honor Building
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CERTIFICATION

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

By, _____

HORACE R. HANSEN

APPENDIX A

102 Cong. Rec. 6857-6864 (1956)

The PRESIDING OFFICER. The amendment offered by the Senator from Illinois for himself and other Senators will be stated.

The LEGISLATIVE CLERK On page 8, between lines 6 and 7, it is proposed to insert the following new subsection:

(d) Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which such bank holding company maintains its principal office and place of business or in which it conducts its principal operations unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication.

Mr. DOUGLAS. Mr. President, the pending bill, and the amendment which has just been read, are in the true American tradition, for what the sponsors of the amendment are seeking to do is to prevent an undue concentration of banking and financial power, and instead to keep the private control of credit diffused as much as possible. For we know that when the credit resources of a country become concentrated and fall into a few hands, then the industry and trade of that country also become concentrated.

Big banks commonly find it much easier and more to their liking to do business with big business rather than with little business.

JACKSON FOUGHT CENTRALIZATION OF BANKING AND CREDIT

Andrew Jackson realized all this when he faced Nicholas Biddle and the Second Bank of the United States. Biddle, building on the traditions of Hamilton, and supported by the Whigs under Webster and Clay, was attempting to make his bank the dominant financial institution of the whole country. He was fast succeeding in this attempt when Andrew Jackson took him on. Jackson not only opposed the private creation of monetary purchasing power by the bank, but also its tendency toward monopolizing credit by driving out the small banks. He wanted credit and banking to be decentralized and diffused so that men might be free.

In that terrific struggle, lasting over a decade, Jackson, aided by Thomas H. Benton, saved economic democracy in this country for a time by denying a new charter to Biddle's bank. And although the Whigs tried hard to revive Biddle's power, they were turned back by the Democrats and by John Tyler at a later date.

Similarly, when Salmon P. Chase created the national banking system during the Civil War, he not only desired to create a market for Government bonds by building up a supplementary currency built upon them, but he also wanted to have so many national banks created by the lure of double interest that the new banking system would also be diffused like that of the various State systems.

In short, we who are struggling to prevent the concen-

tration of financial power from becoming greater are carrying on the fighting tradition of Andrew Jackson who wanted a competitive and a free America, and not one dominated by a relatively small group of financiers and industrialists.

DANGERS OF CONCENTRATED BANKING POWER SHOWN IN EXPERIENCE OF BRITAIN

If we look abroad we see plenty of corroboration for our fears about the concentration of banking powers. A century and a quarter ago, England had large numbers of provincial bankers who helped to finance the relatively small industries of their localities. But gradually these private bankers were bought up by and merged with the bigger houses, so that for many years now there have been virtually only five banks which have mattered in England and Wales, namely, Barclays, Lloyds, Midland, Westminster, and National Provincial. These firms do more than three quarters of the banking business of the entire United Kingdom, including Scotland and Northern Ireland.

Along with this concentration in banking, and partially caused by it, there has developed a concentration in manufacturing and in industry. There is but 1 chemical company in Great Britain, 2 flour concerns, 2 chocolate and cocoa companies, only a handful of breweries and distilleries, not more than 2 tobacco companies, and tight cartels in steel, tin, machinery, and textiles. Professor Ben Lewis has shown how widespread this stifling of competition is in Great Britain. The Big Five have been important factors in promoting this concentration and in reducing competition.

BANKING CONCENTRATION IN CANADA AND GERMANY ALSO LEAD TO INDUSTRIAL MONOPOLY AND CARTELS

Canada, our neighbor to the north, is going through a similar experience. There are only 11 banks in all of Canada to serve 16 million people. The Bank of Montreal, for example, has absorbed at least 10 other banks and has 603 branches. The Royal Bank of Canada, a consolidation of another 10 banks, has 793 branches. Ten more banks have been absorbed into the Canadian Bank of Commerce, which now has 651 branches, while still another score of banks have been swallowed up in the Canadian Bank of Commerce. The Bank of Nova Scotia, a consolidation of half a dozen banks, has 415 branches, while 2 banks designed to serve primarily the French-Canadian population have 560 and 349 branches, respectively.

The two biggest banks in Canada, namely, the Bank of Montreal and the Royal Bank of Canada, have almost precisely half of the total bank deposits in the entire country. If we add the third largest bank, 67 percent or two-thirds of the countrywide total will be included. The top four have well over three-quarters of the total deposits.

As in Great Britain, monopoly and quasi-monopoly in industry have accompanied this concentration of banking. There is, I believe, only one tobacco company, for example, in all of Canada, and one private railroad; and a similar situation exists in a very large number of industries. Moreover, industry and banking are so intertwined in directing personnel and in financing as to prove how the concentration of banking power has helped to promote industrial monopoly and quasi-monopoly.

Incidentally, the power of the private monopolies led to the movement for nationalization which was carried out for about one fifth of the British industry by the Labor Party from 1945 to 1951.

The example of Germany is notorious. Prior to Hitler there were only three banks in Germany, namely, the Deutsche, the Dresdner, and the Commerz Banks. These played ball with and helped the cartels and monopolies. As all students of nazism know, it was the cartels and the big banks which financed Hitler's final drive to power. Thus, concentration of financial power helped on the concentration of economic power, and then the two forces joined hands to aid in creating a dictatorship of political power with all of the terrible consequences which ensued.

CONCENTRATIONS IN BANKING AND CREDIT ARE ALSO SERIOUS DANGERS IN THIS COUNTRY

All these examples paint an image of what is likely to happen in this country if we permit the concentration of banking and credit, which has already gone far, to go farther. For here, as elsewhere, the control over credit is moving into fewer and fewer hands.

At the same time, industry has been moving out of competition into closer and closer concentration—monopoly and quasi-monopoly. This has been helped by the big banks. If we do not wish to travel the path of Canada, Great Britain, and Germany, we should do something effective to check and, if possible, to roll back the concentration of banking and credit. For he who controls the credit of a country controls the industry of that country and, ultimately, the political life of the Nation as well.

Unfortunately, we have already traveled very far down the way of the concentration of credit and banking. This has been done by the growth of the original home offices of the big banks, such as the Continental and First National Banks of Chicago and the Chase and National City Banks of New York, but also by three other forms of accretion, namely, mergers, branch banking, and bank holding companies.

BANK MERGERS HAVE INCREASED RAPIDLY

During the past 9 years, bank mergers have been growing apace. The following number of banks have been merged since 1947:

Year:	*Number of mergers*
1947	82
1948	77
1949	76
1950	89
1951	79
1952	99
1953	115
1954	207
1955	231
Total	1,076

Source: Federal Deposit Insurance Corporation.

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Thus, nearly 1,100 banks merged during these 9 years, with the numbers greatly increasing during the last 3 years. This, moreover, was during a period when the total num-

ber of banks in the country was decreasing by 475, from 14,759 to 14,284. This was a decrease of 3.2 percent.

Among the big mergers were those in New York City of the Chase National Bank and the Bank of Manhattan, of the National City and the First National, the Chemical Bank & Trust and the Corn Exchange, and the Bankers Trust and Public National. These mergers alone involved $19½ billion of assets and over 57 percent of the banking facilities of New York City. There have been a great many other mergers in other portions of the country.

BANK BRANCHES HAVE ALSO MULTIPLIED

The second way control over credit becomes concentrated is through the opening of branches. The organization of branch banks proceeded very rapidly in the 1920's, and to check their growth various States passed laws limiting, and in some cases preventing it, as in the case of Illinois. National banks had previously been implicitly prohibited from opening branches, and there was a strong movement to remove this prohibition and completely open up the field for the national banks. This, however, was not done. Instead, by the McFadden Act and other measures, national banks have been permitted to open branches only to the degree permitted by State laws and State authorities.

I may say that what our amendment aims to do is to carry over into the field of holding companies the same provisions which already apply for branch banking under the McFadden Act—namely, our amendment will permit out-of-State holding companies to acquire banks in other States only to the degree that State laws expressly permit them; and that is the provision of the McFadden Act.

Despite these restrictions on branch banking there has been a great expansion of branches during the last 9 years. At the end of 1946 there were 4,220 branches. This number had increased by the end of last year to 7,391. This was a growth of 3,171 branches, or 75 percent. Among the banks with many branches is the Bank of America, which is now the largest bank in the world, and which dominates banking in California.

HOLDING COMPANIES HAVE ALSO EXPANDED RAPIDLY

The third way in which credit is becoming concentrated is through the device of holding companies. Holding companies have been developed in part—I would say largely—in order to get around restrictions on branch banking. A State will prohibit branch banking, and so a holding company will be organized, which will buy up individual banks and operate them, in effect, within the State, and which sometimes buy up banks in other States and also operate them, in effect, as branches. Even though local officers and directors are used, the direction rests in the holding company. Two out-of-State holding companies have invaded Illinois in just this way, and each company controls three banks in Illinois, despite our Illinois laws prohibiting branch banking.

Now, the two holding companies which operate out of Minneapolis—namely, the First Bank Stock Corporation of Minneapolis, which had 75 banks and 6 branches, and which operated in 4 States, with total deposits of $1,352,000,000 as of the end of 1954, and the Northwest Bancorporation of Minneapolis, which had 72 banks and 22 branches in 7 States with deposits of $1,583,000.000—have

been developed and formed largely because of restrictions on branch banking in Minnesota, Nebraska, North Dakota, South Dakota, and Montana. Since branch banking was prohibited or restricted, at least originally, these holding companies buy up the controlling interests in the banks and operate them as branches.

I see the eminent senior Senator from North Dakota present, and if he wishes, he may make whatever comment he wishes to make,

Mr. LANGER. I have no comment except to say that what the distinguished Senator has said is absolutely true.

Mr. DOUGLAS. I thank the Senator.

In New York the State is divided into 10 zones. Branch banking is permitted within each of the zones, but a bank cannot have branches in another zone. What happened there? The Marine Midland Co., of Jersey City, was organized, and it bought banks in each of the 10 zones and established 125 branches. As of the end of 1954, it had total deposits of $1,635,000,000. Now, the letter of the law is complied with, but, in effect, each of those 10 banks—each one within a given zone—is operated as a unit of a centralized banking system.

TRANSAMERICA CORP. IS LARGEST HOLDING COMPANY AND GROWING RAPIDLY

The biggest holding company is, of course, Transamerica, which was originally closely affiliated with the Giannini banking interests and the Bank of America, but which has attained greater independence in recent years.

As the eminent junior Senator from Virginia stated

yesterday, that holding company not only had banks in 5 States, with 167 branches, and banking deposits of $2,021,-000,000 as of the end of 1954, but it is somewhat unique in that it has a large number of nonbanking corporations which it controls and directs.

I wish to make a correction for the Record. I said that at the end of 1954 Transamerica had banks in five States. As I shall show in a few minutes, it now has banks in 10 States, because it has been expanding, in recent months and weeks, at a very rapid rate.

I yield to the Senator from Virginia, who seems to want to make a statement.

Mr. ROBERTSON. I was going to suggest what the Senator has just stated, that Transamerica now has banks in 10 States.

Mr. DOUGLAS. That is correct. Perhaps we should say that "Eastward the course of banking empire takes its way."

In addition, Transamerica owns one of the largest insurance companies in the United States—the Occidental Life Insurance Co.—and other insurance companies and a variety of other industrial enterprises, including a salmon packing company which packs some of the good Columbia River salmon, which I am sorry to say have displaced Maine salmon from the table, and so forth. As everyone should know, the present bill requires the divestiture of those nonbanking assets.

Mr. MORSE. Mr. President, will the Senator from Illinois yield?

The PRESIDING OFFICER (Mr. Neuberger in the

chair). Does the Senator from Illinois yield to the Senator from Oregon?

Mr. DOUGLAS. I am glad to yield.

Mr. MORSE. I regret that the Senator from Illinois has said he is sorry that Columbia salmon have displaced Maine salmon. I will see that he gets a Columbia salmon again, to refresh his taste and enable him better to understand why Columbia salmon have replaced Maine salmon.

Mr. DOUGLAS. The Senator from Illinois was permitting his boyhood fondness for landlocked Maine salmon to express itself, in contrast with the sockeye salmon which goes through such an amazing odyssey from the inland lakes to the sea, and back again.

Mr. President, not only does Transamerica have branches in California, but it also has greatly expanded its operations elsewhere. It has purchased a bank in Oregon—the First National Bank, I believe—and has expanded its holdings there until they totaled 68 branches and had 45 percent of the bank deposits in that State at the end of 1954. It controls most of the banking resources in Nevada. The two banks it controls in Nevada had 77 percent of the bank deposits in that State at the end of 1954. At the end of 1954, the 1 bank it owned in Arizona had 17 branches and 21 percent of the bank deposits in that State; and since that time there has been further expansion. So, Mr. President, the Transamerica Corporation is a most powerful group.

OTHER HOLDING COMPANIES CONTROL LARGE PERCENTAGE OF TOTAL DEPOSITS IN VARIOUS STATES

Now let us consider the two holding companies which operate out of Minneapolis: The First Bank Stock Corp., with deposits at the end of 1954 of $1,352,000,000; and the Northwest Bancorporation, with deposits of $1,502,000,000. If we add them together, we find that those 2 holding companies then controlled 55 percent of the bank deposits in Minnesota, 44 percent of the bank deposits in Montana, 29 percent of the bank deposits in North Dakota, and 32½ percent of the bank deposits in South Dakota; and these figures are correct only as of the end of 1954.

In a minute I shall speak of the extraordinary expansion which has occurred in more recent years. The figures I have given are taken from pages 51 and 52 of the printed hearings of the Banking and Currency Committee which are on the desks of all Senators. In addition, there are minor holdings of the Northwest Bancorporation in Iowa, Nebraska, and Wisconsin.

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Then there is the First Security Corp., which is based primarily upon Utah, where in 1954 it controlled almost 24.6 percent of the bank deposits in that State; and 32.5 percent of the bank deposits in Idaho. In recent years this corporation has also been expanded.

As is well known, the corporation is controlled by the Eccles family. Mr. Eccles was for many years a member of the board of governors of the Federal Reserve System, and for many years was chairman of the board. In my opinion he was one of the most distinguished public serv-

ants we have had in the United States for many years. Mr. Eccles made war on holding companies when he was a public servant, and I know he was absolutely sincere in doing so, because he thought they were against the public interest. Then he resigned from the Federal Reserve Board, and went into private banking; and now as a private banker he is naturally seeking to expand his banking interests to the fullest degree possible. There is nothing in the slightest degree unethical in what Mr. Eccles is doing. He happens to be a close personal friend of mine. But since I believe that the expansion of bank holding companies is not in the public interest, I shall oppose the future expansion of the First Security Corp., across State lines, just as I am opposing expansion of other bank holding corporations.

Mr. President, in addition to those instances, there are also a considerable number of bank holding companies which at present operate only within State lines, whereas the ones to which I have previously referred operate across State lines. However, there are some which operate only within a single State. As I have previously mentioned, one of them is the Marine Midland Corp., operating in New York, with deposits at the end of 1954 of $1,636,000,000. Another is the Wisconsin Bankshares Corp., which had 6 banks and 14 branches, and at the end of 1954 had deposits of $780,000,000.

Still another is the BancOhio Corp., with 21 banks and 17 branches, and deposits of $556,000,000 at the end of 1954. In Massachusetts there are 2, namely, the Baystate Corp., with 9 banks and 66 branches and with deposits of $399,000.000; and the Shawmut group, with 14 banks, 37 branches, and deposits of $523,000,000.

Then there are two, which have just been given special exemption, namely, the Trust Company of Georgia Associates and the Trustees of the First National Bank of Louisville, of Louisville, Ky.

Then there are minor holding companies as well.

Mr. KUCHEL. Mr. President, will the Senator from Illinois yield to me?

Mr. DOUGLAS. I am glad to yield for a question.

Mr. KUCHEL. First of all, let me ask the Senator from Illinois whether he is now arguing, or laying a foundation, for the amendment he has proposed.

Mr. DOUGLAS. That is correct.

Mr. KUCHEL. I wish to say to the Senator from Illinois that my inclination is to support his amendment. But I wish to ask a question. I think the Senator from Illinois said a few moments ago that in his judgment the theory of holding companies was contrary to the public interest.

Mr. DOUGLAS. No; I said that further expansion of holding companies in the field of banking would be contrary to the public interest.

Mr. KUCHEL. Then do I correctly understand that it is the position of the Senator from Illinois that the situation existing today with respect to bank holding companies in his judgment is not against the public interest?

Mr. DOUGLAS. If any other Senator wishes to make a motion to require bank holding companies to divest themselves of their bank stock as well as of their nonbanking assets, the Senator from Illinois will support such a motion.

But all that the Senator from Illinois is at present trying to do is to prevent bank holding companies from expanding across State lines, unless the States give them explicit permission to do so.

Mr. KUCHEL. As I say, my inclination is to support my friend from Illinois in that venture.

Mr. DOUGLAS. The inclinations of the Senator from California are always very helpful and generous.

Mr. KUCHEL. I appreciate that statement.

If the pending bill is designed to prohibit holding companies in the public interest, my question of the Senator is this—and I asked the same question earlier of the Senator from Indiana [Mr. Capehart]—Why does the bill make certain specific exemptions, on the basis of policy?

Mr. DOUGLAS. The Senator from Illinois is not too happy about the exemptions which we have granted.

Mr. KUCHEL. Is his unhappiness of sufficient strength to cause him to oppose the bill on that basis?

Mr. DOUGLAS. No; it is not, because I think, on the whole, the bill is a step forward. I am not too happy about these exemptions. They came about in the play of stresses and strains of banking and political life. I think I voted against most of them in committee. But if my amendment is approved, I think, on the whole, the bill will be a big step forward. If it is not approved, it will be a little step forward.

Mr. KUCHEL. As I understand, the Senator cannot find justification for eliminating some holding companies, while at the same time permitting and protecting others.

Mr. DOUGLAS. The Senator from Illinois has been very unhappy about that situation.

HOLDING COMPANIES HAVE EXPANDED MORE RAPIDLY IN RECENT MONTHS

Mr. President, the figures which I have been giving apply as of the end of 1954. Since then the process of acquisition of banks by holding companies has proceeded apace.

The First Security Corporation has been "getting into the act." It bought up the Commercial Bank of Utah, with $18 million in deposits, and 8 banking offices, in January of this year, and the Uinta State Bank, of Vernal, Utah, according to a report in the American Banker for March 12, 1956.

Transamerica has been extending its empire. It acquired the Southern Arizona Bank & Trust Co., with 7 banking offices and $77 million in deposits, in November of 1955. I believe that is the old group of banks formerly headed by Lewis W. Douglas.

It acquired the Bank of New Mexico, with $23 million in deposits and 4 banking offices, in January 1956.

It took over the First National Bank of Caldwell, Idaho, the Continental State Bank at Boise, Idaho, and the Bank of Eastern Idaho, at Idaho Falls, with $41 million in total deposits and 7 banking offices, in January 1956. It took over the Walker Bank & Trust Co. of Salt Lake City, with $117 million in deposits and 5 banking offices, in February 1956.

It took over the Sandy City Bank of Sandy, Utah, with $7 million deposits and 2 banking offices, in March 1956.

I hold in my hand an article from the Salt Lake Tribune of April 13, 1956, which describes the purchase by Transamerica of the Casper, Wyo , First National Bank and the Riverton National Bank, which were old-time Wyoming financial institutions. The Waddell family of Casper were the principal shareholders in those institutions.

According to my information, Transamerica has also purchased in March 1956 the Cache Valley Banking Co., of Logan, Utah, with $9 million in deposits. These three Utah acquisitions by Transamerica give it and the First Security Corp. together 49½ percent of the bank deposits in that State, according to data furnished to me today by the Federal Reserve Board.

If my information is correct, Transamerica also purchased the Montana Bank, of Great Falls, Mont. Since we held the hearings last year, it has gone into New Mexico, Idaho, Utah, Montana, and Wyoming for the first time. The financial information which I am able to obtain is that in the case of many of these banks Transamerica has paid far more than the book value of the stock.

As Transamerica has been expanding, the Minneapolis bank holding companies have been expanding as well. The First Bank Stock Corp of Minneapolis, Minn., has purchased the Worthington National Bank of that town in Minnesota, with $7 million in deposits; the Northern Minnesota National Bank, of Duluth, with $57 million in deposits; the Duluth National Bank, of that city, with $9 million in deposits; the First National Bank of Hibbing, Minn., with $13 million in deposits; the First National Bank of Virginia, Minn., with $12 million in deposits; and the Batavia National Bank, of LaCrosse, Wis., with $12 million

in deposits. This LaCrosse acquisition moves their Minneapolis holding company into Wisconsin for the first time.

Marine Midland of New York has also purchased two banks, namely, the First National Bank of Herkimer, with $9 million in deposits, and the Bank of Towanda, also with $9 million in deposits.

So the bank holding companies have been expanding very rapidly in recent months, possibly because of a desire to "beat the gun" so that they would have a

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foothold in new States and not be required to divest themselves of these banks when the new law went into effect—and possibly in fear that if my amendment were approved they would be shut off from future expansion across State lines.

Mr. President, I have said all this to lay the background for our amendment. It is not merely my amendment. It is also sponsored by a very eminent group of Senators. It has been advocated, as we all know, by the Independent Bankers Association of America. It has been endorsed by the American Bankers Association, although I suspect that some of the big banks are not too happy with it. Nevertheless, the official action of the American Bankers Association is in its favor.

COMMITTEE BILL MAKES NEEDED IMPROVEMENTS

I wish to speak very briefly about the changes which our amendment would make in the bill as it has been reported. I think the Senator from Virginia [Mr. Robertson] deserves to be congratulated for the work he has done in

getting this bank holding bill out on the floor of the Senate. It makes two fundamental changes. In the first place, it requires the divestment by bank holding companies of nonbanking assets, and hence removes the possibility of future abuse.

The second feature is that any future expansion of bank holding companies, including the purchase of additional banks, will be permitted only if the Federal Reserve Board gives its permission.

The bill lays down a number of standards to be followed by the Board, including standards relating to financial history, condition of the company, prospects of the company, character of management, needs of the community, whether the acquisition would expand the size of the bank holding company beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking, and so forth.

PENDING AMENDMENT PREVENTS BANK ACQUISITION BY OUT-OF-STATE HOLDING COMPANY UNLESS STATE LAW EXPRESSLY PERMITS

Our amendment would prohibit bank holding companies from purchasing banks in other state unless such purchases by out-of-State holding companies were specifically permitted by law in such States. At present no State specifically grants such permission. Therefore the immediate practical effect would be to bar the expansion of bank holding companies across State lines. But the amendment would leave the way open for States to make explicit provision for such purchases and acquisitions if they so de-

cided. If they were to do so, then such expansion would be subject to the rules and judgment of the Federal Reserve Board.

Even with my amendment, the Federal Reserve Board would still have final jurisdiction over the acquisition of banks or bank holding companies within a given State, that is, intrastate acquisitions. If and when individual States permitted a bank holding company from another State to acquire assets across State lines, then the Federal Reserve Board would have final jurisdiction in those cases as well.

I wish to repeat that, so far as interstate acquisition of banks is concerned, namely, purchase by bank holding companies of banks in other States, the provision in my amendment is in principle almost identical with the present provision which governs branch banking.

Therefore, it is a logical continuation of the principles of the McFadden Act, which tried to prevent the Federal power from being used to permit national banks to expand across State lines in a way contrary to State policy and, of course, under the McFadden Act, even to expand within a State.

Anyone who favors States rights, it seems to me should support my amendment. I am not urging it on that ground, however. I believe in a somewhat unified banking system. However, so far as the bank holding companies are concerned I want to check their expansion. This seems to me to be about the best way of doing so.

AMENDMENT DOES NOT AID BUT RATHER IMPEDES FURTHER MONOPOLISTIC EXPANSION ACROSS STATE LINES

My good friend the Senator from Virginia [Mr. Robertson] yesterday, in his speech presenting the bill, criticized my amendment on the ground that, by making further interstate expansion more difficult, it would freeze the present situation and would aid monopoly.

In the first place, it does not freeze the situation, as the analysis of the powers left to the Board makes clear. It is still possible to have an expansion of a bank-holding company within its home State, if it musters the approval of the Federal Reserve Board. Moreover, if State law permits, and if approved by the Board, interstate acquisitions are possible. Therefore the amendment does not freeze the situation.

If the amendment aided the existing holding companies, as the Senator's argument implies, they would favor it. They do not favor it. They are a very able group of men. I am informed that Transamerica and the two Minneapolis holding companies, and the First Security Corporation of Utah, are very much opposed to my amendment. I believe they know their own self interest, and pursue it, as is quite proper. I am not blaming them for that. Therefore it must be news to them that the amendment would aid and protect them in their existing position.

Basically, the argument of the Senator from Virginia seems to be that the way to check monopoly is not to check it, and that by permitting other competing banking concentrations the same right to expand and take over independent banks, which is enjoyed by present holding companies, we would bring about a more competitive situation.

Surely the existence of monopolistic conditions in some areas is no justification for true opponents of monopoly to urge that their growth be permitted in all areas, on the principle of "justice among monopolies." The present degree of concentration of control does not give everyone else a vested right to equivalent expansion. Furthermore, the big holding companies, freed from the restraint of my amendment, would undoubtedly keep far ahead of the rest of the pack. These are unequal races, in which the strong usually outdistance the weak.

I am not interested in having a bank situation in which there are only two banks in a State competing with each other. I am interested in a bank situation in which there are a large number of banks with no monopoly and with a dispersion of power.

If the Senate really desires to reverse the trend toward the concentration of banking, it could write legislation requiring the divestiture not merely of nonbanking assets, but of banking properties themselves, beyond certain limits. If anyone proposes an amendment such as that, I again wish to assure him in advance that I shall support it. However, no one suggests such a proposal in the bill, and it should not be argued against my amendment that it does not require it.

What the bill with my amendment does is to check a rising trend to monopoly without undoing it completely.

I yield the floor.

Mr. ROBERTSON. Mr. President, I suggest the absence of a quorum.

Mr. BENNETT. Mr. President, will the Senator withhold the suggestion for the present?

Mr. ROBERTSON. I will withhold it for the moment.

Mr. BENNETT. Mr. President, I have grave doubt about the wisdom of the amendment of the Senator from Illinois [Mr. Douglas] in the form in which it is presented. I recognize that it is less severe than the House language which contains a flat, unequivocal prohibition against bank holding companies crossing State lines. But it is only slightly less severe in that it makes a blanket prohibition which can only be lifted by specific affirmative action by the States and in its present form creates an evil which I must oppose.

The net effect of the amendment is to require every State that does not now have legislation prohibiting bank holding companies to discriminate in favor of such corporations that may be resident in their State and against bank holding companies resident in any other State and requires affirmative legislation to remove the discrimination.

So far as I can learn, no State has of its own volition, and by action of its own legislature, set up such a discrimination. There are some States, including the State of Illinois, which prohibit all bank holding companies, domestic as well as foreign. This is not discriminatory. But I know of no State that permits domestic bank holding companies to operate within its borders and shuts out their counterparts residents in other States. That would be the effect of this amendment.

For Congress to require discrimination in interstate commerce, and then leave it to the several States to correct it, is a strange approach, out of harmony with the basic American concept of fairness and fair play. It smacks a little of the concept that a man is guilty until proved innocent.

It will have two other interesting consequences. It will preserve and protect the status quo in those States in which foreign or domestic bank holding companies are now operating, and will serve to intensify their expansion within these narrowed ranges. This would tend to set up some areas of bank holding company concentration and others that will be free.

I think I can look at this problem objectively. In my State we have two big bank holding companies represented, one foreign and one domestic, and a number of smaller local banking groups. At last count we had 97 banks in the State, 58 in holding companies and 46 operating as independents. So I am in the middle, and can afford to look at the principles involved. Since I want to eliminate rather than create discrimination, and since I want the States left free to act on this subject affirmatively for themselves, and not first be burdened with discrimination by our action, I am forced to vote against the amendment.

Mr. BRICKER. Mr. President, I wish briefly to discuss the amendment offered by the Senator from Illinois [Mr. Douglas], not particularly as it affects the rights of the States, although I did serve for many years in my State in a capacity which afforded me opportunity to consider attempts to prevent discrimination by one State against another, the tendency, manifested again 2 years ago, to Balkanize State jurisdictions, and matters related to constitutionality, and so forth, and I believe constructive service was rendered in that field. However, I consider a constitutional question to be involved in the amendment submitted by the Senator from Illinois.

Mr. President, the amendment proposed by the Senator

from Illinois was considered by the Banking and Currency Committee and was rejected by the committee. In fact, only four votes were recorded in favor of the proposal. The Federal Reserve Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation are all opposed to this amendment, because, in effect, it constitutes an absolute prohibition against future expansion by bank holding companies. I am sure it is obvious that every bank holding company in the country is opposed to this punitive proposal.

I stated earlier the procedure under S. 2577 for the Federal Reserve to consider every proposed acquisition of additional banks whether within the State or across State lines. Both types of acquisitions are treated the same. Under the bill, a bank holding company must obtain prior approval from the Federal Reserve Board before it can acquire a bank. The Federal Reserve Board in considering an application for an acquisition must take into consideration five factors. These factors are, first, the financial history and condition of the company or companies in the banks concerned; second, their prospects; third, character of their management; fourth, convenience, needs, and welfare of the communities in the area concerned; and, fifth, whether or not the effect of such acquisition would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

The last factor I named is the most important and requires the Federal Reserve Board to consider the question of the public interest and the preservation of competition in the field of banking. This provision gives the Fed-

eral Reserve Board power to prevent undue concentrations of banking activities and at the same time permits the strengthening and expansion of banking facilities when needed.

The Douglas amendment prohibits the acquisition of a bank outside the home State of a bank holding company unless the laws of the State to be entered specifically authorize such acquisition. I submit, Mr. President, that no State in this country has enacted laws along this line. So the effect of the Douglas amendment is to absolutely prohibit a bank from crossing State lines. This proposal suggests that bank holding companies are evil per se and that any further growth should be prohibited. The amendment is another attempt to force bank holding companies out of business. This is contrary to the theory of the Senate bill which seeks to regulate bank holding companies and not to punish them.

Some statements have been made to the effect that this amendment protects States' rights. I believe that I am as strong a States rights advocate as any Member of this body. However, this amendment forces States to take legislative action to protect themselves and thus is clearly a derogation of States rights.

Section 7 of S. 2577 preserves the true States rights in regard to this question. The bill reserves to the States their present authority to regulate bank holding company operations within their borders and does not force the States to take any action. The committee believes that this provision is an adequate preservation of the rights of our States.

I should also like to point out that the Douglas amendment runs counter to the policy of the National Bank Act

and our dual system of National and State banks. The National Bank Act recognizes the exclusive jurisdiction of the Federal Government over national banks just as the States have exclusive jurisdiction over State banks. The branch banking law is cited as a precedent for giving powers to States over national banks. The branch-banking law is the only major exception to the general rule that the Federal Government has exclusive jurisdiction over national banks.

However, it must be remembered that prior to the McFadden Act of 1927, national banks did not have statutory authority to establish branches. The purpose of the McFadden Act and the Banking Act of 1933 was to permit national banks to compete with State banks in States which authorized State banks to have branches. Congress merely gave national banks equal powers with State banks in respect to branch offices. These acts enlarged the powers of national banks rather than restricted them. Certainly it cannot be argued successfully that the branch-banking law is a precedent for permitting States to place restrictions on national banks and take away privileges they now enjoy.

In conclusion, Mr. President, I wish to reiterate that the committee rejected this amendment. The Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and all the bank holding companies are absolutely opposed to it, and I hope the Senate will reject the amendment in the interest of sound banking and the preservation of the competitive system of banking in our country as between the various States and as between the Federal Government and the States.

Mr. PAYNE. Mr. President, I ask unanimous consent to have printed in the Record, a statement concerning the

amendment offered by the Senator from Illinois, for himself and other Senators, and concerning the bill itself.

The PRESIDING OFFICER. Is there objection?

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY SENATOR PAYNE

The junior Senator from Maine would like to speak briefly today in support of bank holding company bill S. 2577, now under debate by the Senate. At the very outset, I would like to emphasize my firm faith in the independent banking system which has been the foundation of economic growth in the United States, the traditional source of capital investment, and the holder of the savings of millions of individual Americans. It is my firm belief that S. 2577 with the amendments approved by the Senate Committee on Banking and Currency and with the additional amendment proposed by the senior Senator from Illinois [Mr. Douglas] will halt the trend toward the destruction of the independent banking system and will preserve independent banking as the financial base of the United States economy.

During the hearings held last summer on various bank holding bills before the Senate Committee on Banking and Currency, of which I am a member, witnesses representing bank holding companies repeatedly questioned the need for regulation or limitation of their operations. These witnesses stated that there had been no abuse of either the letter or the spirit of the law in their operations. And they were right, because there is now no law that effectively regulates the conduct of the bank holding company. The bank holding company is structurally beyond the reach of present

statutory laws. Separate segments of its operations are subject to careful regulation, such as its subsidiary banks which are subject to the national banking laws and to the banking laws of the States in which they operate. The nonbanking subsidiaries of bank holding companies are regulated in the same way as other completely independent corporations. However, the totality of the bank holding company operation is in many respects, because of its unique structure, beyond the law. Through its ability to cross State lines, the bank holding company can operate in a way closed to the independent bank. The competition presented by a single bank which is a subsidiary of a bank holding company may not in any legal sense be unfair competition, but the fact that it is backed by the powerful assets of a vast bank holding company gives it a competitive advantage that is undeniable. And this competitive advantage springs from the fact that the bank holding company can operate in a manner closed to the independent bank.

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I have heard it said that the independent banker is afraid of competition. I do not believe that it is necessary to give any extended argument to disprove this assertion. The independent banker is naturally afraid of competition which is going to put him out of business. And he has every right to resent the competition of the bank holding company subsidiary which has capital resources behind it of a vastness not available to the independent banker by the very nature of his operation as an independent bank. Some would say that this kind of competition is good for the independent banks. It is not good for them if it is going to eliminate them as independent banking units. And it is not good for the economic stability of the country if independent banks are no longer able to compete successfully.

It is important to establish in any discussion of bank holding company legislation the value of the independent banking system. The independent banking system has been the traditional banking system in the United States. The independent banks financed the economic growth of this country through some of its most expansive periods. Methods and regulations governing the methods of independent banking have evolved with the development of our economy. Mistakes which were made have been corrected so that we now have a carefully regulated and safe independent banking system, privately owned and operated, working for the benefit of the communities the independent banks serve.

The independent bank is a local operation, owned and managed by citizens of the community in which it operates. The particular financial needs and problems of the community are well known and thoroughly understood by the directors and officers of the local independent bank who in no small measure contributes to the economic growth and financial well-being of that community. What is important to the community is important to the financial leaders of that community. And in the independent bank those financial leaders are in a position to act in the interests of the community.

In the bank whose control is in the hands of the bank holding company's shareholders, the policy of the bank must necessarily be concerned with insuring a profit to the controlling shareholders who are not in all likelihood, local people. What is most profitable for the shareholders may also be in the interest of the community in which the bank is operating, but this does not necessarily follow. Where there is a conflict between community interest

and the profit interest of the shareholders who are not members of that community, it would seem likely that the policy of the bank might well be directed toward serving its shareholders. In the independent bank serving a community this situation will not arise in the same way. True the directors and officers of the independent bank must also serve their shareholders. But in most cases those shareholders are also local people, residents of the community. No one would pretend that every action taken by every board of directors of every independent bank is inevitably in the interests of the community which these banks are serving. But the incidence rate of a correaltion between the interest of local shareholders and the community itself could naturally be expected to be higher in the case of the independent bank than in the case of a bank which is owned by a bank holding company whose shareholders are spread throughout a far wider area than the town or city.

The bank is a semipublic institution. The bank may be privately owned, but in serving its owners, its activities must be in accord with the public interest, both to justify its existence and to comply with the laws which regulate banking. By insuring the preservation of the independent banking system through the passage of S. 2577, we can insure the preservation of the public character of banking.

The divestment provisions of S. 2577 have been described by some as unduly harsh, unnecessary, and unjust. If we accept the fundamental argument, and I think we must accept it, that it is neither wise nor safe nor in the public interest to combine banking assets with nonbanking assets in the same financial structure, then the divest-

ment provisions of S. 2577 are neither unduly harsh, unnecessary, nor unjust. Special tax exemptions in the act will enable bank holding companies to preserve their nonbanking assets after divestment in the form of banking assets, or the bank holding company may distribute them to the holding company shareholders as the directors see fit.

Although I approve of S. 2577 as a definite step in the right direction, it is my feeling that more can be done to insure the preservation of the independent banking system at this time. My distinguished colleague, the senior Senator from Illinois [Mr. Douglas] has introduced an amendment to S. 2577 which I have cosponsored. This amendment would require that State legislatures pass specific legislation authorizing bank holding companies from another State to acquire interests in State banks located within its borders. The purpose of this amendment is to return to the States their traditional control over the activities of the State banks now nominally under the State's authority.

S. 2577 leaves the control of the future expansion of bank holding companies to the discretion of the Federal Reserve Board. It is not my intention to question the capacity of the Federal Reserve Board to carry out the will of the Congress, but it seems to me that the control of expansion of bank holding companies across State lines into State banks is a matter of primary concern to the State governments and is an area best left to their discretion rather than to have it solely under the jurisdiction of the Federal Reserve Board.

Mr. President, in this brief statement, I have not attempted to go into the complexities of S. 2577. I have spoken in very broad terms, and have tried only to outline some

of the reasons why I am in favor of S. 2577 with the amendment proposed by Senator Douglas. We now have before us a bill which is just and reasonable. It does not pretend to rectify all the problems involved in bank holding companies. But it will, if enacted, go a long way toward halting the trend toward overconcentration of financial interests in the United States. The Douglas amendment would reestablish State authority over State banks. I am convinced that it will be in the interests of our banking system and in the interests of all the people of this Nation to enact S. 2577 with the Douglas amendment.

Mr. ROBERTSON. Mr. President, I suggest the absence of a quorum.

Mr. MORSE. Mr. President, will the Senator from Virginia withhold his suggestion?

Mr. ROBERTSON. I shall be glad to do so.

Mr. MORSE. Mr. President, I wish to associate myself with the remarks of the Senator from Illinois [Mr. Douglas]. I have been advised that his amendment is favored by independent bankers across the country. I know of no group which is more identified with free enterprise than are the independent bankers; and I know of no group more in favor of States rights, so far as concerns protecting the economic interests at the lower level of private business institutions. What they have in effect pointed out is that the breadth of the extension of great banking empires across State lines as having a very detrimental effect upon the continuation of the American competitive system in the banking industry. It seems to me that if we are in favor of the competitive enterprise system we will support the Douglas amendment.

Mr. ROBERTSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Green	McNamara
Anderson	Hayden	Millikin
Barkley	Hennings	Morse
Beall	Hill	Mundt
Bennett	Holland	Murray
Bible	Hruska	Neely
Bricker	Humphrey	Neuberger
Bridges	Jackson	Pastore
Butler	Jenner	Payne
Byrd	Johnson, Tex.	Potter
Capehart	Johnston, S. C.	Purtell
Carlson	Kefauver	Robertson
Case, N. J.	Kerr	Russell
Case, S. Dak.	Knowland	Schoeppel
Cotton	Kuchel	Scott
Curtis	Laird	Smathers
Daniel	Langer	Smith, Maine
Dirksen	Lehman	Smith, N. J.
Douglas	Long	Symington
Duff	Magnuson	Thye
Eastland	Malone	Welker
Ellender	Mansfield	Williams
Ervin	Martin, Iowa	Wofford
Frear	Martin, Pa.	Young
Fulbright	McCarthy	
George	McClellan	

The PRESIDING OFFICER. A quorum is present.

The question is on agreeing to the amendment offered by the Senator from Illinois [Mr. Douglas] on behalf of himself and other Senators.

Mr. ROBERTSON. Mr. President, I ask for the yeas and nays on the Douglas amendment.

The yeas and nays were ordered.

Mr. KNOWLAND. Mr. President, for the information of the Senate will the distinguished Senator from Virginia, who is handling the bill on the floor, indicate what position the Federal Reserve Board and the FDIC took, if they took any position on the matter, when the amendment was presented in committee?

Mr. ROBERTSON. Mr. President, the amendment was first considered last summer, before the bill was reported. At that time there were no votes for the amendment. It was considered again in February. At that time there were four votes for the amendment. The testimony before the committee was that the President was in favor of the proposed legislation without the amendment. The amendment was opposed by the Federal Reserve Board, the Comptroller of the Currency, and the FDIC.

Mr. DOUGLAS. Mr. President, will the Senator yield for a supplementary question?

Mr. ROBERTSON: I yield.

Mr. DOUGLAS. Is it not true that while there were only 4 votes for the amendment, there were only 6 votes against it?

Mr. ROBERTSON: That is correct. The others were not recorded.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Illinois [Mr. Douglas] for himself and other Senators. On this

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question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. JOHNSON of Texas. I announce that the Senator from New Mexico [Mr. Chavez], the Senator from Kentucky [Mr. Clemets], the Senator from Tennessee [Mr. Gore], the Senator from Massachusetts [Mr. Kennedy], the Senator from Oklahoma [Mr. Monroney], the Senator from Wyoming [Mr. O'Mahoney], and the Senator from Alabama [Mr. Sparkman] are absent on official business.

The Senator from Mississippi [Mr. Stennis] is absent because of a death in his family.

I further announce, if present and voting, the Senator from Tennessee [Mr. Gore], the Senator from Oklahoma [Mr. Monroney], the Senator from Wyoming [Mr. O'Mahoney], the Senator from Alabama [Mr. Sparkman], and the Senator from Mississippi [Mr. Stennis] would each vote "yea."

Mr. KNOWLAND. I announce that the Senator from Colorado [Mr. Allott] and the Senator from New York [Mr. Ives] are absent because of illness.

Mr. KNOWLAND. I announce that the Senator from Connecticut [Mr. Bush], the Senator from Idaho [Mr. Dworshak], the Senator from Arizona [Mr. Goldwater], and the Senator from Iowa [Mr. Hickenlooper] are necessarily absent.

The Senator from Vermont [Mr. Flanders], the Senator from Massachusetts [Mr. Saltonstall], the Senator from Utah [Mr. Watkins], and the Senator from Wisconsin [Mr. Wiley] are absent on official business.

The Senator from Wyoming [Mr. Barrett] is detained on official business.

On this vote, the Senator from Colorado [Mr. Allott] is paired with the Senator from Vermont [Mr. Flanders]. If present and voting, the Senator from Colorado [Mr. Allott] would vote "yea" and the Senator from Vermont [Mr. Flanders] would vote "nay."

Also on this vote, the Senator from Wyoming [Mr. Barrett] is paired with the Senator from Utah [Mr. Watkins]. If present and voting, the Senator from Wyoming would vote "yea" and the Senator from Utah would vote "nay."

The result was announced—yeas 58, nays 18, as follows.

YEAS—58

Aiken	Holland	McNamara
Anderson	Hruska	Millikin
Barkley	Humphrey	Morse
Bridges	Jackson	Murray
Byrd	Jenner	Neely
Capehart	Johnson, Tex.	Neuberger
Case, N. J.	Johnston, S. C.	Pastore
Cotton	Kefauver	Payne
Curtis	Kerr	Potter
Daniel	Kuchel	Purtell
Dirksen	Laird	Russell
Douglas	Langer	Scott
Duff	Lehman	Smathers
Eastland	Long	Smith, Maine
Ellender	Magnuson	Smith, N. J.
Ervin	Mansfield	Symington
Fulbright	Martin, Pa.	Welker
George	Martin, Iowa	Wofford
Hennings	McCarthy	
Hill	McClellan	

NAYS—18

Beall	Case, S. Dak.	Mundt
Bennett	Frear	Robertson
Bible	Green	Schoeppel
Bricker	Hayden	Thye
Butler	Knowland	Williams
Carlson	Malone	Young

NOT VOTING—20

Allott	Flanders	O'Mahoney
Barrett	Goldwater	Saltonstall
Bender	Gore	Sparkman
Bush	Hickenlooper	Stennis
Chavez	Ives	Watkins
Clements	Kennedy	Wiley
Dworshak	Monroney	

So, the amendment offered by Mr. Douglas, for himself and other Senators, was agreed to.